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ENTERTAINMENT AND SPORTS LAW

GORDON I. KIRKE, Q.C.

VOLUME I: SPORTS LAW

1995

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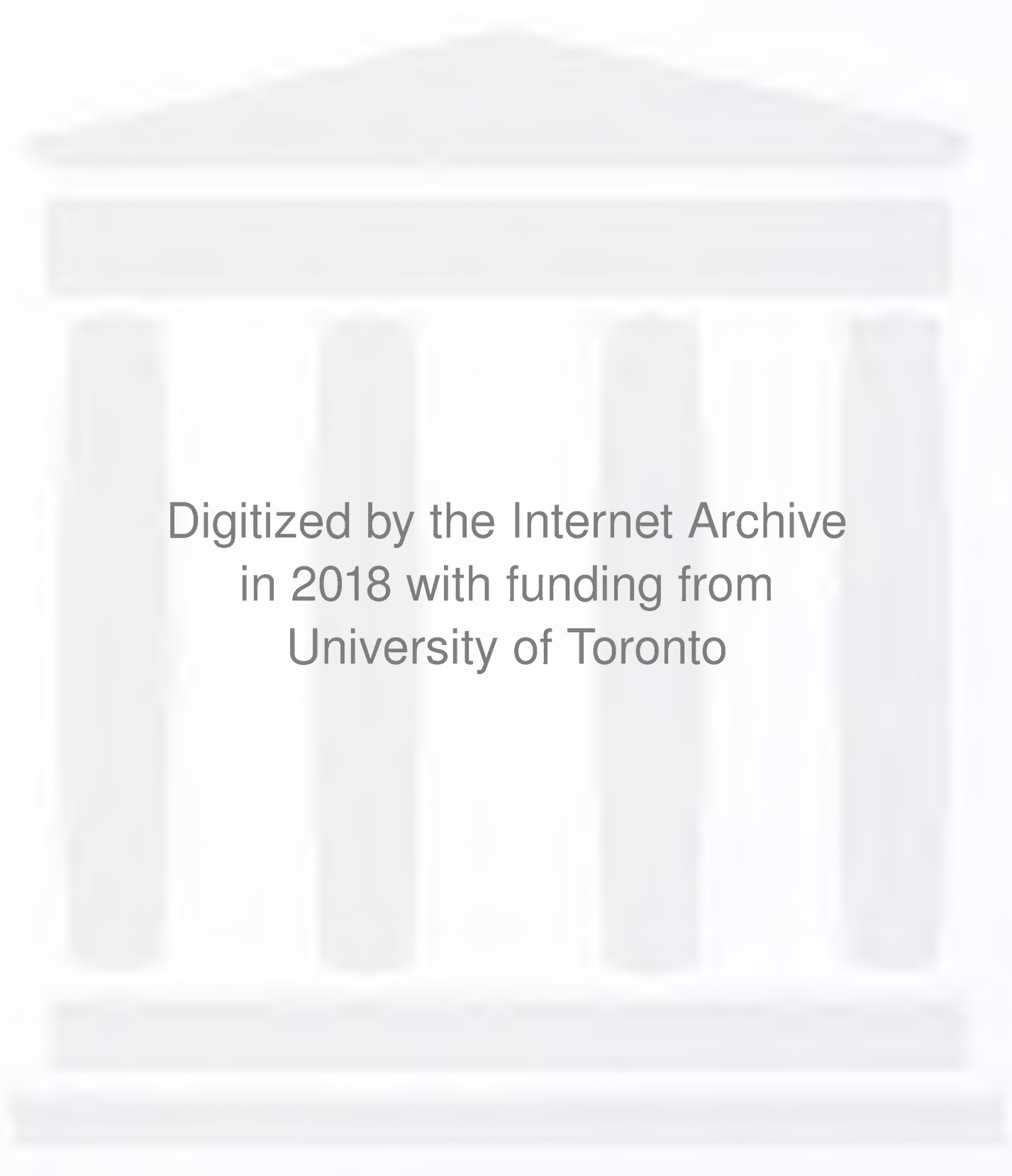
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STANDARD PLAYER CONTRACT and COLLECTIVE AGREEMENTS

Introductory Notes

Introduction

The employer-employee relationship in professional sports leagues is relatively unique. It is a highly regulated relationship with relatively few aspects of the relationship being subject to individual amendment or negotiation. The League By-Laws regulate, amongst other things, the allocation, registration and movement of players, the Collective Agreements lay down common minimum standards of employment, benefits and procedures; and the Standard Player Contract is a standard form document regulating most of the basic terms of the player's employment. The decision to offer a contract, the length of service, and the quantum and form of remuneration are the major negotiated items left open by the Standard Player contract. Under the Collective Agreements of most leagues the Standard Player Contract can only be modified to the benefit of the player.

Standard Player Contract

The contents of the Standard Player Contract were originally devised unilaterally by team management, and imposed detailed obligations on the player while granting sweeping powers to the club. These contracts were offered to the player on a "take-it-or-leave-it" basis. However, with the development of collective bargaining in professional sports, this inequality in bargaining power has been remedied to some extent. The Collective Agreements of the various leagues not only prescribe the acceptable Standard Form Contract, but also incorporate detailed amendments to the Standard Form Contract so that protections and benefits of the Collective Agreement are reflected in the contract. In the event of any conflict between the Collective Agreement and any other contract (the Standard Form Contract or League By-laws) the Collective Agreement will govern. Thus, the Collective

Agreement ranks at the top of the contract hierarchy (at least insofar as the employer/employee relationship is concerned).

Although the player and club begin with the Standard Player Contract, substantial latitude still exists for individual negotiation. The following are the most common areas of negotiation left open to the parties by the Standard Player Contract:

- the length of the contract
- whether the contract is to be wholly or partially "guaranteed" by the club i.e., will the player receive his full salary if he is permanently injured, sent to the minors or traded to another team at a lower salary?
- signing bonuses i.e., will the player receive a signing bonus, how much will it be and how will it be paid i.e., up front or on a deferred basis?
- base salary and form of payment of base salary, i.e., if the base salary is \$500,000 per annum will the player actually receive that salary each year or will it be deferred over a longer period?
- performance incentives and bonuses i.e., an additional payment if the player scores a certain number of goals or pitches a certain number of innings
- payment of expenses to players i.e., travelling expenses, moving expenses, meal allowances.

Standard Player Contracts in professional sports impose three major obligations on players: (1) to play for and train with the club; (2) to maintain good physical condition; and (3) to abide by the rules of the league and the club. The club's most important obligation under the contract is to pay the player's salary.

While each League's Standard Player Contract is slightly different, there are some particularly important provisions common to all. The following is a brief survey:

- (a) Power of Assignment. Each contract gives the club the express power of assignment. This allows clubs to trade or sell players by assigning their contracts to other teams in return for the assignment of another player's contract or for money. (C.F.L. - Section 14; N.H.L. - Section 11; Baseball - Section 6). Athletes with special bargaining power may be able to amend this provision by replacing it with a "no-trade" clause or a limited trade clause. Under a "no-trade" arrangement the club is precluded from assigning the player's contract without that player's consent. Under a limited trade clause the club may only be precluded from assigning the player's contract to specific teams without the player's consent.
- (b) Unique Skill Provision. In these provisions, the player expressly acknowledges that he has unique skill or ability the loss of which cannot be adequately compensated for by damages, and therefore the club expressly has the right to enjoin the player from performing that skill for any other person or club during the term of the contract. (C.F.L. - Section 13; N.H.L. - Section 6; Baseball - Section 4). The enforceability of such clauses will be reviewed later in these materials.
- (c) Entitlement in the Event of Injury. The club's liability for the player's salary in the event of injury depends on the cause of the disability. In general, the club must continue to pay the player's salary if the injury is sustained in the club's service, but not if the cause was a general want of fitness. In addition, players must pass a pre-season medical examination. (C.F.L. - Section 6; N.H.L. - Section 5; Baseball - Reg. 2).
- (d) Option Clauses. Options give the *club* the right to extend the term of service [usually for an additional one year] generally with the same rights and

obligations as in the last year of the original contract. (C.F.L. - Section 3; N.H.L. - Section 18; Baseball - Section 10).

Collective Agreements

Under collective bargaining, the Players' Association bargains on behalf of all players on all teams throughout the League and deals with representatives of all teams (usually a group of club representatives). The athletes differ from many other "unionized" employees in that they are a small, relatively elite group of "entertainers" with short careers and a high rate of turnover. The work force varies from fringe players to superstars. Also, unlike most non-sports collective agreements, player salaries (with the exception of minimum levels) are not negotiated by the Players' Association. There is no attempt to standardize or equalize pay except to establish a fair minimum salary. The concern of Collective Agreements is mainly with general working conditions, fringe benefits, salary and grievance arbitration, and disciplinary action. As action above, the Collective Agreements are also used to modify the Standard Player Contract and to assist in player allocation [e.g. through systems of free agency].

As you read through the various Collective Agreements, you should pay attention to the following clauses:

- (a) Salary. The amounts listed represent the minimum salary in each of the leagues. (C.F.L. - Article 9; N.H.L. - Article 9).
- (b) Pension Plan. Pension plans are always of utmost importance in the bargaining process. (C.F.L. - Article 13; N.H.L. - Article 13).
- (c) Discipline. Discipline clauses are another important feature of the Collective Agreements. While there are some differences between the leagues, the general principle is that the player must obey the reasonable rules of the club

and that the club shall not discipline a player without just cause. (C.F.L. - Article 21; N.H.L. - Article 4.02). See also Arbitration Procedures.

- (d) Dispute Resolution. Dispute resolution/arbitration procedures are designed to provide fair, expeditious and orderly procedures to resolve player-club conflicts. You will note that there are two types of arbitration: salary arbitration and grievance arbitration. (C.F.L. - Articles 4 and 24; N.H.L. - Articles 4 and 10).

The Standard Player Contracts and Collective Agreements of the various Leagues are the cornerstone of modern "sports law". A thorough understanding of these agreements is the foundation upon which to base your understanding of the rest of the material.

